

IN THE UNITED STATES DISTRICT COURT
FOR NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISIONAPRIL AARON-BRUSH and GINGER
AARON-BRUSH,*Plaintiffs,*

vs.

ROBERT BENTLEY, *et al.*,*Defendants.*

Case No.: 2:14-cv-01091-RDP

PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR LEAVE TO SUBMIT
ADDITIONAL MATERIAL (DOC. # 16)

Defendants have moved for leave to submit a July 30, 2014, Report & Recommendation entered by Magistrate Judge Katherine P. Nelson in *Searcy v. Strange*, Civil Action No. 14-00208-CG-N (S.D. Ala.). Plaintiffs recognize that the Court may take notice of any judicial opinion and therefore do not object to Defendants' submission. Plaintiffs respond briefly, however, to Defendants' implication that this Court should follow the Magistrate Judge's recommendations in this case.

As is evident from the Report & Recommendation itself, the *Searcy* plaintiffs presented very different arguments, relying exclusively on the Governor's general authority over the executive branch and a legal argument that the Governor's presence in the litigation was necessary pursuant to Fed.R.Civ.P. 19. *See* Report & Recommendation (Doc. # 16-1) at 9-10. The *Aaron-Brush* plaintiffs presented far more connection of the Governor to the challenged laws and policies at issue in this case. *See generally* Response in Opposition (Doc. # 14).

Indeed, when *Hard v. Bentley, et al.*, Case No. 2:13-cv-00922-WKW-SRW (M.D. Ala.), was filed, Governor Bentley's office released the following statement:

Governor Bentley will fight the merits of this lawsuit. Like most Alabamians, the Governor strongly believes in the traditional definition of marriage, as being between a man and woman. He will work every day to continue to protect the sanctity of marriage in Alabama.

WSFA 12 News (February 13, 2014) (emphasis added), copy attached as Exhibit 6. Then, in May 2014, after the governor of Pennsylvania stated that he would not challenge the ruling striking down a ban on gay marriages in that state, Governor Bentley's response was:

"I have to defend the constitution," Bentley said. "I have to defend the laws of the state. I don't pass the laws. The legislature passes the laws, the people vote on the constitutional amendments. I am the executive for the state and I have to defend the laws of the state."

WAFF.com (May 21, 2014), copy attached as Exhibit 7. And when this suit was filed, it was reported that:

In a new[s] conference Governor Bentley said, "I think we have to let the court system work. People have the right to file lawsuits, but my job as chief executive of the state is to always execute the laws of the state and I will continue to do that like the law says. The constitution says marriage is between a man and a woman, so we have to uphold the laws of the state and that's what I will do."

ABC 33 (June 10, 2014), copy attached as Exhibit 8.

The Governor, of course, has every right to pick and choose which of Alabama's laws and policies he will actively assert his authority to defend. *See*: Ala. Code. § 36-13-2; *Riley v. Cornerstone Cmty. Outreach, Inc.*, 57 So. 3d 704, 722 (Ala. 2010). But the Governor cannot repeatedly claim the authority and responsibility of defending the challenged laws, saying at one point that he "will work every day to continue to protect the sanctity of marriage in Alabama," and then claim to the Court that his repeated public defense of the challenged laws and state policy is

mere political rhetoric at the bully pulpit “full of sound and fury, signifying nothing”¹ because he really doesn’t have any connection to, or interest in, this litigation.

The Governor’s Motion to Dismiss (Doc. # 9) should be denied.

¹ Shakespeare, *Macbeth*, Act 5, Scene 5.

Respectfully submitted,

s/ Randall C. Marshall

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CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following counsel of record for defendants:

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